IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

Mat.Appeal.No. 233 of 2007

(OP NOS. 783 AND 1220/2005 OF THE FAMILY COURT, ERNAKULAM)
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PETITIONER: APPELLANT

LEENA GEORGE, AGED 32 YEARS,
PELATHINKAL HOUSE,
THIRUVANKULAM,P.O.,ERNAKULAM.

BY ADV. SRI.G.GOPALAKRISHNAN NAIR (EDAPPALLY)

RESPONDENTS: PETITIONER

BIJU VARGHESE AGED 36 YEARS,
S/O.C.P.VARGHESE,CHARUPURATH HOUSE,
MANGALATHUNADA P.O.,KAZHUVANNUR.

BY ADV. SRI.V.RAJENDRAN (PERUMBAVOOR)
SRI.GEORGE VARGHESE KIZHAKKAMBALAM

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 14/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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J.B.KOSHY & V.GIRI, JJ.

Mat.Appeal.No.233 OF 2007

Dated 14th August, 2007

JUDGMENT

Koshy,J.

Appellant filed an application for restitution of conjugal rights and respondent filed an application for declaring the marriage between them as null and void. Their ceremonial marriage was conducted on 26.8.2002. The appellant earlier married one Reji K.Abraham and that marriage was also broken and the appellant herself applied for dissolution of that marriage. While the matter was pending before this court, a joint petition was filed under Section 10A of the Divorce Act. This court dispensed with the waiting period for filing petition under Section 10A and considered the matter. The marriage was dissolved by judgment dated 8th February, 2002 and a decree nisi was issued as per the law existing at that time. Under Section 16 of the Divorce Act, after six months the decree has to be made absolute. A Division Bench of this court in suo motu reference in the matter of Divorce Act reported in 2002(3) KLT 12 held that the procedure will continue to be applicable with regard to the decree nisi passed by the High Court despite the amendment made after 2001. Admittedly, here the earlier decree was only a decree nisi and before making the decree absolute, the second

marriage was conducted, though it was conducted after expiry of six months. Technically the earlier divorce decree has not become final as it was only a decree nisi. In this connection, we also refer to the decision of a Division Bench of this court in ***Annu Thomas*** v. ***Mathew Thomas*** (2001 (2) KLT 688). There is no discretion left with the court under Section 19 of the Divorce Act. Second marriage was conducted before the dissolution of the first marriage became absolute and therefore, Family Court rightly declared that the second marriage was null and void and consequently the application for restitution of conjugal rights was also dismissed. We see no reason to interfere with the impugned order.

The appeal is dismissed.

J.B.KOSHY
JUDGE

V.GIRI
JUDGE

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